



EPA

Department of
Toxic Substances
Control

400 P Street,
4th Floor
P.O. Box 806
Sacramento, CA
95812-0806

January 9, 1998



Pete Wilson
Governor

Peter M. Rooney
Secretary for
Environmental
Protection

Ms. Erin Anderson
United States Coast Guard
Office of Environmental Law
2100 Second Street, S.W.
Washington, D.C. 20593-0001

In re United States Coast Guard HWCA 97/98-3003

Dear Ms. Anderson:

The Department of Toxic Substances Control (Department) signed the Consent Order, In re United States Coast Guard, HWCA 97/98-3003, on January 8, 1998. A copy of the fully executed Order is enclosed. Please note that under paragraph 10 of the Consent Order the sum of \$78,346.50 shall be paid to the Department by April 8, 1998.

The Department will contact the United States Coast Guard, Pacific Command, in the near future to arrange a scoping meeting to discuss the technical requirements of the Consent Order.

The Department looks forward to working with the United States Coast Guard in the future to complete the activities set forth in the Consent Order. If you should have any questions, feel free to call me at (916) 324-0556.

Sincerely,

Robert P. Hoffman
Chief Counsel

Richard W. Sherwood
Senior Staff Counsel

✓
cc: Ms. Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, CA 91201

Erin Anderson
January 9, 1998
Page 2

Mr. Jim McCammon
Statewide Compliance Division
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, CA 91201

PAYMENT VOUCHER

Docket No.: HWCA 97/98-3003

Respondent: United States Coast Guard

ID No.: CA7690390037

County: Alameda

Total Due: \$78,346.50

Administrative Costs \$53,346.50

Penalty/Fine \$25,000.00

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket HWCA 97/98-3003
)	
)	
United States Coast Guard)	CONSENT ORDER
Pacific Area)	
Building 51-6)	Health and Safety Code
Coast Guard Island)	Sections 25187 & 25189.2
Alameda, CA 94501)	
)	
Respondent.)	
)	

The State Department of Toxic Substances Control (Department) and the United States Coast Guard (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent generates and has disposed of hazardous waste (batteries) at fixed terrestrial and aquatic aides-to-navigation sites with lighted marine beacons powered by batteries (ATON) in California.

2. The Department has inspected a number of ATON sites, including inspections of San Nicolas Island on February 23, 1994 and April 6, 1994, San Clemente Island on May 23, 1994 and Santa Catalina Island on July 1, 1994.

3. The Department alleges the following violations:

3.1. Respondent violated Health and Safety Code sections 25201(a) and 25189.2(c) in that within five years prior to the effective date of this Order and continuing thereafter up to the effective date of this Order, the Respondent did dispose of hazardous waste batteries at operational and discontinued

fixed terrestrial and fixed aquatic ATON sites in California (hereinafter California ATON Sites), and/or did allow such batteries to remain deposited on California ATON Sites, which sites do not have a permit or other grant of authorization from the Department.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and desire to ensure prompt compliance with regulatory requirements.

6. Jurisdiction exists pursuant to Health and Safety Code (HSC) sections 25187 and 25189.2.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above in paragraph 3, but does not limit the Department from taking appropriate enforcement action concerning other violations. Notwithstanding any other provision in this Order, this Order does not settle: any violations relating to the disposal of batteries or battery constituents from floating aquatic ATONS; any violations relating to the disposal of batteries or battery constituents from any fixed terrestrial or fixed aquatic ATON site which is not on the ATON list submitted by Respondent in paragraph 9.1.1.. This settlement is expressly conditioned on full compliance by the Respondent with all provisions in this Order.*

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following: (work conducted as of the date this Order was signed by the Respondent is listed on the attached Appendix):

8.1. Any provision of this Order which requires the payment or obligation of funds by the Respondent shall be subject to the availability of appropriated funds, and no provision shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, any dates established under this Order which require the payment or obligation of such funds shall be appropriately adjusted. The Department, notwithstanding any other provision of this Consent Order, reserves all its rights against Respondent in any case where Respondent contends that funds have not been appropriated to fulfill its obligations under this Consent Order or contends that a payment or obligation of funds required under this Consent Order violates the Anti-Deficiency Act.

9.1.1. Within 60 days of the effective date of this Order Respondent shall provide to the Department a list of all California ATON Sites which shall include both operational and non-operational ATONS.

9.1.2. Within ⁹⁰~~60~~ days of the effective date of this Order Respondent shall submit to the Department for its review and approval a survey workplan for all California ATON Sites. This workplan shall establish a schedule which prioritizes surveys to be undertaken at all California ATON Sites. The purpose of the survey is to ascertain if batteries and/or battery constituents were disposed and remain at or in the vicinity of any California ATON Site. The surveys shall be scheduled based on the environmental sensitivity of the area in the vicinity of the ATON, number of ATONS in the area, the accessibility of the ATON site and other appropriate considerations. The workplan shall set forth the manner of investigation, both terrestrial and aquatic, which will be conducted to initially determine if batteries and/or battery constituents remain at or near the California ATON Site. These investigations shall include but are not limited to the following: A physical examination of the site, by the best practical means, to determine if batteries or battery constituents are at the site. The Department will require a showing of good cause before it will approve any inspection that does not include a visual inspection by persons on the ground or by divers.

9.1.3. Respondent shall implement the ATON survey workplan upon approval by the Department and according to the

approved prioritization schedule. All California ATON Sites shall be surveyed by Respondent for batteries and/or battery constituents by April 1, ¹⁹⁹⁹~~1998~~.

9.1.4 Within 30 days of completing the survey of all California ATON Sites, Respondent shall submit to the Department the results of the surveys. The surveys shall identify those ATONS where battery or battery constituents were found and those ATONS where no battery or battery constituents were found. The survey results shall also generally describe the impacted area where battery or battery constituents were found and a description of the site including the following:

- (a) Name and location of ATON;
- (b) Coast Guard area responsible for maintenance;
- (c) Map or chart showing topography of land surface or ocean bottom in vicinity of ATON;
- (d) Results of a physical survey of the area surrounding the ATON including canyons or slopes into which batteries or battery constituents may have migrated.

9.1.5. Within 60 days of completing the survey of all California ATON Sites, Respondent shall submit to the Department for review and approval model workplans and a workplan implementation schedule for the investigation and removal of batteries and battery constituents from the California ATON Sites. Separate workplans shall be submitted for fixed terrestrial and fixed aquatic based ATONS. The workplans shall describe the means Respondent will use to locate, remove, transport and dispose of batteries and battery constituents at

each site or each group of similar sites. The workplans shall include all the following:

- (a) a description of the site and site characteristics;
- (b) a description of hazardous constituents and substances at the site;
- (c) methods that will be used to determine the vertical and horizontal extent of contamination from batteries and battery constituents;
- (d) methods that will be used to remove batteries and battery constituents from the site;
- (e) health and safety plan;
- (f) site specific constituent cleanup levels based on background levels of battery constituents or a site specific baseline risk assessment. A risk assessment shall comply with protocols for risk assessments required by the Department and shall include contaminant identification, environmental evaluation including sensitive environments and rare, threatened or endangered species and habitats, exposure assessment, toxicity assessment, and risk characterization.
- (g) confirmatory field sampling plan detailing sampling that will be done to confirm cleanup levels attained at the sites and battery removal at the sites;
- (h) quality assurance plan for field sampling and sample analysis;
- (i) description of facilities where batteries and battery constituents will be disposed.
- (j) information needed to assist the Department in complying

with the California Environmental Quality Act (CEQA). By agreeing to assist the Department in this manner, the Respondent does not concede that CEQA governs Respondent's activities.

9.1.6. Respondent shall implement the approved model workplans for the investigation and removal of batteries and battery constituents at California ATON Sites according to the Department approved implementation schedule. Notwithstanding any other provision in this Order, all batteries and battery constituents not in service shall have been removed from all California ATON Sites by Respondent by April 1, ²⁰⁰⁰~~1999~~.

9.1.7. Respondent shall after the effective date of this Order provide a written notice to the Department ten (10) working days prior to commencing sampling at a California ATON Site .

9.1.8. Within 30 days of completing an investigation and removal of batteries and battery constituents from each California ATON Site, Respondent shall provide to the Department a site cleanup report containing all information required by the Department, including but not limited to, volumes of batteries and battery debris removed; copies of hazardous waste manifests; documentation establishing that all batteries and battery constituents have been removed and that DTSC approved background constituent levels or DTSC approved health risk based constituent levels have been met; site diagram showing location of samples; and analytical results of confirmation sampling. The Department will review the information provided and approve the work that has been completed, or require that additional work be performed or that additional information be provided.

9.1.9. Respondent shall send quarterly progress reports to the Department by the 15th day of the month due which shall describe the actions that the Respondent has taken in the previous quarter, the Respondent's progress in meeting schedule requirements, and activities scheduled for the next quarter.

9.1.10. Within 30 days of completion of the removal of batteries and battery constituents from all California ATON Sites and no later than May 1, ²⁰⁰⁰~~1999~~, Respondent shall send to the Department a certification, signed by the Commander of the United States Coast Guard, Pacific Area, that the work required under this Order has been completed according to the Department approved work plans and schedules.

9.1.11. Respondent shall immediately cease the disposal of batteries and battery constituents at ATON sites and/or allowing batteries to remain deposited at ATON sites, and shall properly manage the batteries and battery constituents as required by federal and state laws.

9.1.12. Respondent agrees to notify the Department within 15 days of discovery [immediately] of the deposit of batteries or battery constituents from floating aquatic ATONS in California. Should the Respondent or the Department subsequently discover after the effective date of this Order that batteries or battery constituents have been disposed from floating aquatic ATONS in California, Respondent agrees to conduct a survey of and recovery of batteries at such sites according to a Department approved cleanup plan and implementation schedule.

9.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91201

Executive Officer
Regional Water Quality Control Board
Los Angeles Region
101 Centre Plaza Drive
Monterey Park, CA 91754-2156

James McCammon
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91201

9.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by

which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all applicable local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety. Nothing in this Order shall supersede any statutory or regulatory requirements that may hereafter be adopted or enacted.

9.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment. Furthermore, nothing in this Order is intended or shall be construed to limit or preclude any other

government agency, department, board or entity from exercising its authority under any applicable law, statute or regulation.

9.8. Site Access: Access to the California ATON Sites shall be provided to the extent Respondent has the legal right to grant access at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Sites at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Sites; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary which do not interfere with the operation of the ATON. The Department and its representatives agree to follow health and safety requirements which apply to the Sites. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken

pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.16 in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.11. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

9.12. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.13. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.14. Extension Approvals: If the Department determines that good cause exists for an extension, it may grant the request and specify in writing a new compliance schedule.

9.15. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provisions of law.

9.16. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and any successor or assignee of Respondent. Respondent shall ensure that each person or entity acting for, or on behalf of, Respondent, including, but not limited to, officers, employees, agents, contractors, consultants, and subcontractors, fully complies with this Order. This Order also applies to and is binding upon the Department and

any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

9.17. Authority to Enter Agreement: Each signatory to this Order certifies that he or she is fully authorized by the party she or he represents to enter into this Order, to execute it on behalf of the party represented and legally bind that party.

9.18. Modification of Agreement: This Order may only be modified upon written approval of the parties hereto.

9.19. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

10. Payments: Within 90 days of the effective date of this Order, Respondent shall pay the Department a total of \$78,346.50, of which \$25,000.00 is a penalty and \$53,346.50 is reimbursement of the Department's costs of investigation. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
400 P Street, 4th Floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91201

James McCammon
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91201

Richard Sherwood
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11. Reimbursement of Department Future Costs: In addition to the payments made under paragraph 10 of this Order, Respondent agrees to pay all the Department's costs associated with the implementation and execution of this Consent Agreement. Such costs include, but are not limited to, costs incurred by the Department in overseeing the activities conducted by Respondent pursuant to this Order and the Department's overhead.

11.1. The Department will provide Respondent with quarterly invoices documenting its costs which will include the name of the employee, type of activity, amount of time spent and hourly rate charged. The costs shall be due and payable by Respondent to the Department within sixty (60) days of the date of the invoice. All payments shall be made by check payable to the Department of Toxic Substances Control and shall be remitted to:

Accounting Unit
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Respondent, address, and the docket number of this action. Copies of all checks and letters transmitting such checks shall be sent simultaneously to the Department as specified in paragraph 10. Interest as provided in HSC section 25360.1 shall accrue on invoices not paid within 60 days of the date of the invoice.

11.2. The Department will provide Respondent with an estimate of its costs within 45 days of Respondent's submittal of the list of California ATON Sites required in paragraph 9.1.1. The Department will retain all cost records associated with the work performed under this Consent Order as provided by state law.

11.3. If Respondent disputes a particular Department cost, Respondent shall send to the Department a written statement within 45 days of the date of the invoice containing such cost which shall provide a detailed explanation of the dispute, including the legal, factual and technical reasons supporting Respondent's position.

11.4. Respondent and the Department shall thereafter meet and confer on the dispute in an effort to mutually resolve the dispute. If the dispute is not resolved through this process, the Department's Division Chief, Statewide Compliance Division, Hazardous Waste Management Program, shall issue a written decision which will constitute the Department's final administrative decision on the cost dispute. Respondent and the

Department reserve all rights, remedies and defenses conferred upon them by law regarding any final Department administrative cost dispute decision.

12. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

13. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

14. Time Periods: "Days" for purposes of this Order means calendar days.

Dated: 12/17/97

United States Coast Guard

By 

Typed Name J. M. Loy

Title Chief of Staff

Dated: 1/8/98

California Department of Toxic
Substances Control

By 

Florence Gharibian

Branch Chief, Statewide Compliance
Division

